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19 UNITED STATES DISTRICT COURT
20 DISTRICT OF NEVADA

21 Cung Le, Nathan Quarry, Jon Fitch, on behalf
22 of themselves and all others similarly situated,

23 Plaintiffs,

24 v.

25 Zuffa, LLC, d/b/a Ultimate Fighting
26 Championship and UFC,

27 Defendant.

Lead Case No.: 2:15-cv-01045-RFB-
(PAL)

Member Case Nos.:

2:15-cv-01046-RFB-(PAL)
2:15-cv-01055-RFB-(PAL)
2:15-cv-01056-RFB-(PAL)
2:15-cv-01057-RFB-(PAL)

JOINT STATUS REPORT

1	Luis Javier Vazquez and Dennis Lloyd	Case No. 2:15-cv-01055 RFB-(PAL)
2	Hallman, on behalf of themselves and all	
3	others similarly situated,	
4	Plaintiffs,	
5	v.	
6	Zuffa, LLC, d/b/a Ultimate Fighting	
7	Championship and UFC,	
8	Defendant.	
9	Brandon Vera and Pablo Garza, on behalf of	Case No. 2:15-cv-01056 RFB-(PAL)
10	themselves and all others similarly situated,	
11	Plaintiffs,	
12	v.	
13	Zuffa, LLC, d/b/a Ultimate Fighting	
14	Championship and UFC,	
15	Defendant.	
16	Gabe Ruediger and Mac Danzig, on behalf of	Case No. 2:15-cv-01057 RFB-(PAL)
17	themselves and all others similarly situated,	
18	Plaintiffs,	
19	v.	
20	Zuffa, LLC, d/b/a Ultimate Fighting	
21	Championship and UFC,	
22	Defendant.	
23	Kyle Kingsbury and Darren Uyenoyama, on	Case No. 2:15-cv-01046 RFB-(PAL)
24	behalf of themselves and all others similarly	
25	situated,	
26	Plaintiffs,	
27	v.	
28	Zuffa, LLC, d/b/a Ultimate Fighting	
	Championship and UFC,	
	Defendant.	

1 The parties in the above-captioned matters have met and conferred and submit the
2 following Joint Status Report.

3 **I. Outstanding Motions**

4 The only outstanding motion is Zuffa's Motion to Dismiss. (Dkt. 64). Judge Boulware
5 has scheduled a hearing today, September 25, 2015, on that motion.

6 **II. Protective Order**

7 The parties met and conferred on a proposed stipulated Protective Order and came to
8 agreement on all issues except one: whether a two-tiered system of confidentiality designations is
9 appropriate in this case and who should have access to "Highly Confidential" information under
10 that Order. On August 27, 2015, the parties each filed their respective proposed Protective
11 Orders, which differ only in this regard. Dkt. Nos. 158, 159, 178. Each party also filed a brief
12 memorandum setting out its position with regard to this issue. Plaintiffs filed a response to
13 Zuffa's submission addressing issues related to Zuffa's attempt to prevent Plaintiffs' counsel Rob
14 Maysey from viewing "highly confidential" materials. Dkt. No. 183. Pursuant to Local Rule 7-2,
15 Zuffa will move to strike Plaintiffs' untimely opposition.

16 **III. ESI Stipulation**

17 On September 2, 2015, the parties submitted a [Proposed] Stipulated Order re: Discovery
18 of Electronically Stored Information that would govern the treatment of ESI in this case. Dkt.
19 160. Judge Boulware has scheduled a hearing today, September 25, 2015, on the ESI Stipulation
20 submission. The parties will advise the Court, following Judge Boulware's decision, if further
21 follow-up on this issue is required.

22 **IV. Phasing Discovery**

23 Following the hearing on the Motion to Stay, the Court directed the parties to make
24 "preliminary progress" and try to reach agreement with respect to the categories of information
25 that could be provided or a phasing of discovery that could proceed in a cost-effective way. The
26 parties have met and conferred numerous times on the proper approach and have presented and
27 discussed their respective proposals for the phasing of discovery and production. While the
28 parties have not reached agreement, Zuffa has committed to producing certain categories of hard

1 copy documents and ESI, as discussed more fully below. Plaintiffs agree that Zuffa should
 2 promptly produce the categories of hard copy documents and ESI set forth in Zuffa's proposal,
 3 but submit that Zuffa's production should be broader, as discussed more fully below.

4 **Plaintiffs' Proposal**

5 Plaintiffs' proposal contemplates an efficient two-phase discovery process that
 6 balances Plaintiffs' legitimate discovery needs with Zuffa's discovery obligations.
 7 Plaintiffs' proposal is intended to expedite the production of documents and information in
 8 response to Plaintiffs' First Set of Requests for Production, which have been pending since
 9 April 26, 2015, and necessary to prosecute Plaintiffs' claims in a cost-effective way that
 10 minimizes the time and burden on Zuffa without imposing substantial delay and
 11 uncertainty. Because the Court has scheduled a hearing on Zuffa's motion to dismiss for
 12 today, September 25, 2015, and the process of developing and implementing a plan to
 13 collect, search, review and produce ESI and custodial files is time consuming, Plaintiffs
 14 believe that process should begin in earnest now and not after the Court has decided the
 15 Motion to Dismiss. Plaintiffs submit that because of the amount of time that developing
 16 and beginning to implement the process has and will continue to consume, it is unlikely
 17 that Zuffa will incur substantial expense before the motion to dismiss is decided in any
 18 event.

19 By way of background, Plaintiffs allege that Zuffa possesses illegal monopoly
 20 power over the market for Elite MMA Events and illegal monopsony power over Elite
 21 MMA Fighters

22 The *Le* Complaint alleges that Zuffa engaged in an anticompetitive scheme though
 23 which it used anticompetitive conduct to establish and maintain its dominance in the
 24 market for promoting live elite professional MMA events ("Elite MMA Events"). That
 25 conduct included, among other things, (a) entering exclusive contracts with Elite MMA
 26 Fighters that effectively blocked the vast majority from fighting for rivals, (b) using
 27 threats, intimidation, and retaliation against MMA fighters who work with or for would-be
 28 rivals or speak out against Zuffa, (c) acquiring rival promotion companies and relegating to

1 “minor leagues” those that it did not acquire, and (d) entering exclusive agreements with
2 key sponsors and venues.

3 Plaintiffs also allege that by impairing the ability of its potential or actual rivals’
4 access to necessary inputs (i.e., Elite MMA Fighters) and acquiring them, Zuffa foreclosed
5 competition from actual or potential rival elite MMA promoters. As a result, Zuffa became
6 the dominant, indeed only, promoter of Elite MMA Events. Zuffa’s resulting monopoly
7 power in turn gave the Zuffa monopsony power over Elite MMA Fighters because it was
8 the dominant, if only, purchaser of their services. That monopsony power enabled Zuffa to
9 impose certain exclusive contractual terms on Elite MMA Fighters, including relinquishing
10 their identity rights. Zuffa thereby impaired the ability of rival promoters to access certain
11 inputs necessary to operate a successful MMA promotion company. Thus the scheme
12 enabled Zuffa to injure MMA Fighters by artificially suppressing their compensation for
13 bouts and their identity rights.

14 At the outset, Plaintiffs propose that Zuffa produce documents and information now
15 in response to only 31 of Plaintiffs’ 59 document requests in the first phase. (*i.e.*, Requests
16 11-17, 19-25, 27, 31, 33, 35, 37, 39, 40, 42, 43, 49, 50-52, 54-57) (“Phase 1”).

17 With respect to the documents and information to be produced in response to the 31
18 Phase 1 Requests, Plaintiffs propose several ways in which many of the requests can be
19 tailored to reduce the volume of documents and information to be produced and, therefore,
20 the associated cost and burden.

21 During the meet and confer process Zuffa produced organizational charts
22 responsive to Request No. 8. However, the organizational charts produced cover only the
23 period beginning in January 2015, after the first complaint was filed in this action. Zuffa
24 has informed Plaintiffs that it does not have reliable, finalized organizational charts before
25 this period. Therefore, Plaintiffs have proposed that Zuffa identify all custodians (with
26 titles) who may have potentially relevant information and who were employed by it during
27 the Relevant Period. Once Plaintiffs have the opportunity to review the requested custodial
28 information, they can engage in an informed and meaningful negotiation to identify an

1 agreed number of custodians whose documents and information should be searched for
2 production. Once Zuffa's custodians are identified, Plaintiffs propose that Zuffa identify
3 the volume and location of ESI associated with each custodian, which will help the parties
4 make informed decisions about the scope and volume of potentially responsive documents
5 and the best way, to the extent necessary, to make the production more efficient and cost-
6 effective.

7 With respect to Requests 11-14, which seek information about Zuffa's revenues and
8 costs including fighter compensation among other things, Plaintiffs propose to minimize
9 the scope of responsive documents by foregoing the production of "check level"
10 documents, based upon Plaintiffs' understanding of the nature of responsive information
11 which Zuffa proposes to produce in response to these Requests. However, Plaintiffs
12 understand that the parties have agreed that by doing so Plaintiffs' are not waiving their
13 right to seek the production of check level documents or additional documents and
14 information after Plaintiffs have had the opportunity to review and analyze Zuffa's
15 proposed production in response to Requests 11-14.

16 Plaintiffs propose to limit the scope of Zuffa's response to Request 17, regarding
17 negotiations and agreements between Zuffa and other MMA promoters, by limiting it to
18 responsive documents and information regarding actual or potential acquisitions of actual
19 or potential rival MMA promoters on or after January 2006, but not earlier. This time
20 frame and scope of actual or potential acquisitions coincides with the allegations in the
21 Complaint that Zuffa's scheme of anticompetitive acquisitions began in 2006, not with the
22 Strikeforce acquisition in 2010. *See* Le Compl. at ¶ 129 ("Beginning at least as early as
23 December 2006, the UFC embarked on a campaign to monopolize and monopsonize the
24 Relevant Markets. As part of a deliberate plan to consolidate the MMA Industry and more
25 broadly solidify its control over the Relevant Markets, the UFC began acquiring its
26 competitors one by one.").

27 Plaintiffs also propose to substantially narrow the scope of Requests 50 and 52,
28 regarding agreements with and content posted to websites and social media, by limiting the

1 production of responsive documents and information to only 15 of the 123 websites, social
2 media and on-line accounts identified by Zuffa in response to Plaintiffs' interrogatories.
3 However, the parties are continuing to meet and confer regarding the scope of the
4 responsive on-line and social media accounts at issue. Therefore, Plaintiffs reserve the right
5 to seek productions relating to additional accounts identified by Plaintiffs that are
6 responsive to Requests 50 and 52. Plaintiffs also propose to exclude all responsive videos
7 that include only footage of a bout. Plaintiffs believe that given Zuffa's vast library of bout
8 videos and the traditional size of such files, eliminating such bout footage will substantially
9 reduce the total ESI to be searched and produced. Plaintiffs understand that all of the
10 documents and information contained in the subset of materials that they propose Zuffa
11 produce in response to these requests was made publicly available by Zuffa. Therefore,
12 Plaintiffs believe that the production of these materials will not impose a substantial burden
13 on Zuffa because it is not necessary to review the materials for privilege or legal
14 protections and Plaintiffs are willing to forego a Zuffa's review for responsiveness. Zuffa's
15 stated belief that at least some of the Plaintiffs and their counsel have monitored some of
16 these sites does not relieve it of its obligations under the Federal Rules. Moreover, although
17 materials that remain online can be collected by Plaintiffs, Plaintiffs believe that before
18 Zuffa is excused from producing certain materials that are currently publicly available, the
19 parties must reach appropriate agreements regarding the evidentiary nature and
20 admissibility of such material. Zuffa's complaint regarding the purported high cost of
21 collecting data from third party providers such as Twitter rings hollow because Zuffa has
22 objected to Plaintiffs' subpoena to Twitter and has provided Plaintiffs with no information
23 regarding the burden, if any, and associated costs of collecting this material.

24 Plaintiffs propose that Zuffa produce a listing of investigations, litigations,
25 arbitrations and other disputes responsive to Requests 54, 55, and 56. By doing so,
26 Plaintiffs believe that they can reduce the scope of responsive material by identifying a
27 subset of relevant investigations and disputes for production in addition to the production
28

1 of documents that Zuffa provided to the FTC in response to its inquiry regarding Zuffa's
2 acquisition of Strikeforce.

3 Plaintiffs have also proposed to narrow the Relevant Period which will necessarily
4 reduce the total volume of documents and information to be searched. As noted, the
5 complaint alleges that Zuffa's anticompetitive scheme began at least as early as 2006.

6 Plaintiffs' proposal also contemplates that the parties will meet and confer about
7 additional ways in which the remaining requests can be narrowed. Throughout the meet
8 and confer process, until now, Zuffa had proposed to defer the process of narrowing the
9 scope of the requests regarding custodial documents to a second phase after the motion to
10 dismiss is decided. However, the parties have had preliminary discussions about whether to
11 use search terms to narrow the universe of responsive custodial documents, but have not
12 yet exchanged proposed search terms. Plaintiffs believe that, in addition to ways in which
13 the requests can be narrowed identified above, many of the remaining requests may be
14 subject to further narrowing through the meet and confer process. However, Plaintiffs
15 believe that deferring that aspect of the meet and confer process is inefficient and imposes
16 unnecessary delay.

17 Plaintiffs propose to further reduce the volume of ESI and custodial documents by
18 applying De-NISTing¹ and email threading. Plaintiffs also propose that the parties continue
19 to meet and confer regarding the application of non-traditional review methods, such as
20 predictive coding and technology assisted review, once Plaintiffs have what they believe is
21 an adequate understanding of the identity and number of Zuffa's custodians with
22 potentially relevant information, the types of systems and devices on which ESI is
23 maintained or stored, and the volume.

24 In addition, Plaintiffs also agreed to substantially limit Zuffa's preservation
25 obligations regarding relevant voicemail. Plaintiffs' proposal thus contemplates that Zuffa

27 ¹ De-NISTing is the process of identifying and removing files that are system generated and
28 generally accepted to have no substantive value in most instances.

1 need not produce voicemail generated after its preservation obligation was eliminated by
2 agreement of the parties.

3 Finally, of Plaintiffs' remaining 28 requests which Plaintiffs did not include in their Phase
4 1 proposal, Plaintiffs also propose that Zuffa need not produce any documents or information in
5 response to six requests (26, 28, 32, 34, 36 and 38) if Zuffa provides complete answers to related
6 interrogatories for an agreed upon Relevant Period. Plaintiffs propose that once substantial
7 progress has been made on their Phase 1 proposal, Zuffa can begin production in response to the
8 remainder of Plaintiffs' requests. However, in the interest of efficiency, Plaintiffs propose that the
9 parties work to address the scope of all of both Phase 1 and Phase 1 requests at the outset.

10 Based on the parties' extensive meet and confers, Plaintiffs believe that, aside from
11 certain areas such as financial information, the production of only non-custodial documents
12 and information will not provide Plaintiffs with necessary discovery regarding many
13 aspects of the alleged conduct that can only (or in some cases most efficiently), be obtained
14 from Zuffa's custodial files. Such areas include the alleged use of threats, intimidation, and
15 retaliation and the motivations, intentions and decision making process of Zuffa and its
16 personnel when engaging in certain alleged conduct and practices such as proposed
17 acquisitions and commercial relationships as well as its dealings with class members and
18 third parties that are not memorialized in the terms of executed contracts.

19 Plaintiffs propose that all readily-available hardcopy documents and "centrally
20 maintained" ESI in response to Plaintiffs' requests for files related to fighters, sponsors, and
21 venues (Requests Nos. 16, 20-28, 35, 37 39, 40, 43) should be produced in Phase 1, especially if
22 they are not part of what Zuffa has called its "custodial files". These documents are central to
23 Plaintiffs' case. Plaintiffs fail to see any unique burden in producing all of these readily-
24 accessible files in Phase 1. This is especially true because Zuffa has not specified what volume of
25 materials is at issue. Zuffa has not informed Plaintiffs what volume of responsive information is
26 contained in "centrally maintained" ESI relating to fighters, sponsors, or venues. Zuffa has also
27 not informed Plaintiffs what volume of hardcopy files are available for fighters, sponsors, or
28 venues. Zuffa's contention that the identification and production of an unspecified volume of

1 documents and information that go to the central allegations in the complaint is *per se* overly
2 burdensome rings hollow. Plaintiffs cannot yet meaningfully evaluate Zuffa's proposal to produce
3 only a subset of this information without additional information regarding the volume of materials
4 at contained in Zuffa's "centrally maintained" ESI and the volume of hardcopy files available for
5 fighters, sponsor, and venues. Plaintiffs propose to continue to meet and confer with Zuffa on
6 these issues.

7 In addition to all readily-available hardcopy documents and "centrally maintained" ESI in
8 response to Plaintiffs' requests for files related to fighters, sponsors, and venues as discussed
9 above, Plaintiffs propose that at this time Zuffa produce hard copy documents in response to the
10 remainder of Requests Nos. 16, 20-28, 35, 37 39, 40, 43. Plaintiffs understand that Zuffa has
11 easily accessible hardcopy files related to Requests Nos. 16, 20-28, 35, 37 39, 40, 43. Although
12 Plaintiffs can appreciate that full-blown ESI production can be costly, that is not what Plaintiffs
13 propose. It is not unreasonable to require Zuffa to perform the privilege review necessary to
14 produce the requested hard copy document at this time. Zuffa has not provided Plaintiffs with
15 details on the volume of its hardcopy "custodial files," therefore, there is no basis to conclude that
16 a privilege review will impose an unreasonable burden. This is especially true because the
17 versions of the Protective Order proposed by both parties has a "clawback" provision that allows
18 for production of documents without privilege review, should a party deem it too expensive. At
19 this time, Plaintiffs are only aware that Zuffa's hard copy contract files likely include documents
20 relating to hundreds of athletes, but Zuffa has not provided Plaintiffs with details regarding the
21 actual volume.

22 Plaintiffs agree with Zuffa, in principal, that production of custodial ESI can wait until
23 Phase 2, but as explained above, believe that more comprehensive engagement is required at this
24 time to ensure that the parties are prepared for ESI discovery promptly if the Court sustains
25 Plaintiffs' Complaint. Plaintiffs propose that the parties continue to meet and confer on selection
26 of custodians and search terms.

1 **Zuffa's Proposal**

2 Zuffa's proposal contemplates an efficient and cost-effective two-phase discovery
 3 process. In Phase 1, Zuffa would provide Plaintiffs with a significant number of core documents
 4 responsive to their Requests for Production that can be obtained from centrally-maintained hard
 5 copy and ESI files or from targeted searches of certain custodial files. This plan would provide
 6 Plaintiffs with substantial information related to the core allegations in their Complaints, while
 7 reserving the costly and time consuming process of collecting, processing, searching, and
 8 reviewing entire hard copy and electronic custodial files, including reviewing them for privilege,
 9 until the second phase of discovery, after the Court has decided the Motion to Dismiss. In total,
 10 Zuffa's proposal would provide Plaintiffs in Phase 1 with relevant documents and information
 11 responsive to 30 of their 59 Requests for Production, including extensive financial data and the
 12 contracts that go the heart of Plaintiffs' case.

13 Zuffa's Phase 1 proposal includes, but is not limited to, the provision of the following
 14 categories of documents:

15 • **Organizational charts (RFP 8):** Zuffa has already produced to Plaintiffs copies of two
 16 organizational charts from 2015, as well as responding to interrogatories requesting similar
 17 information. Zuffa does not currently have reliable, finalized versions of organizational charts
 18 prior to that date. However, it has provided some additional information with regard to the
 19 periods various individuals held their respective positions, is gathering additional information on
 20 predecessors to the individuals currently holding pertinent positions and anticipates providing
 21 additional information next week.

22 • **Financial Documents (RFPs 11-14):** Zuffa has agreed to provide documents responsive
 23 to these requests in Phase 1, including detailed financial documents such as consolidated financial
 24 statements, event-by-event financial analyses, where available, showing gate receipts, Pay-Per-
 25 View revenues, and sponsorship and merchandise revenues and documents showing revenue from
 26 other sources that are not contained in the event-by event analyses. Zuffa also proposed to
 27 provide financial data sufficient to show each athlete's event and non-event related compensation
 28 in Plaintiffs' requested format, where possible, on an event-by-event and fighter-by-fighter basis.

1 Zuffa believes that the information and documents it intends to collect and provide in Phase 1 in
 2 response to these requests will (to the extent that responsive documents exist in the normal course
 3 of business) essentially satisfy these requests, and that to the extent Plaintiffs determine that they
 4 require additional information, such discussions will be more productive after Plaintiffs review
 5 the Phase 1 production.

6 • **Fighter Contract Files (RFPs 16, 20-26, 39, 40, 43):** In Phase 1, Zuffa proposed to
 7 provide to Plaintiffs copies of the hard copy Fighter Files for the named Plaintiffs and an agreed-
 8 upon number of additional fighters selected by Plaintiffs. These hard copy files contain not only
 9 the agreements entered into between Zuffa and the fighter but, where applicable, also
 10 correspondence related to the contracts, including negotiations, and correspondence regarding
 11 extensions and suspensions and related information that Plaintiffs can use to test their allegation
 12 that the contracts lock fighters up “in perpetuity.” These files, which include contracts and other
 13 information for, at minimum, hundreds of athletes, are extraordinarily voluminous and, given the
 14 communications regarding negotiations, contracts, and extensions, contain materials that may be
 15 privileged and will require close privilege review. Moreover, because these files contain
 16 personally identifiable information (“PII”), such as Social Security numbers, the files will need to
 17 be redacted to protect the athletes’ PII. Given those considerations, which will require extensive
 18 review of the files prior to production, Zuffa has agreed to produce a representative subset of
 19 these files to Plaintiffs in Phase 1. For these and the other files for which Zuffa has offered to
 20 provide representative samples, Zuffa has offered to discuss an appropriate sampling method with
 21 Plaintiffs.

22 • **Venue Contract Files (RFP 27, 28):** Zuffa has proposed to provide Plaintiffs with the
 23 contract files for an agreed-upon number of venues selected by the Plaintiffs. These contract files
 24 contain not only the agreement between Zuffa and the venue but may also contain additional
 25 information related to the contract, such as correspondence. Given the potential for privileged
 26 information in these files, which will require extensive review prior to production, Zuffa has
 27 proposed in Phase 1 to provide Plaintiffs with a representative sample of these files.

28 • **Sponsor Contract Files (RFP 37):** Zuffa has proposed in Phase 1 to provide Plaintiffs

1 with the contract files for an agreed-upon number of sponsors selected by Plaintiffs. Like the
 2 venue files, these files may also contain additional information such as correspondence related to
 3 the agreement. Given the potential for privileged information in these files, which will require
 4 extensive review prior to production, Zuffa has proposed in Phase 1 to provide Plaintiffs with a
 5 representative sample of these files.

6 • **Merchandise Contract Files (RFP 35):** Zuffa has proposed in Phase 1 to provide
 7 Plaintiffs with a representative sample of contract files for an agreed-upon number of third-party
 8 merchandisers selected by Plaintiffs. These files are not limited to the agreements but may
 9 contain additional information related to the agreement, such as correspondence. Given the
 10 potential for privileged information in these files, which will require extensive review prior to
 11 production, Zuffa has proposed in Phase 1 to provide Plaintiffs with a representative sample of
 12 these files.

13 • **List of Television Contracts (RFP 33):** In Phase 1, Zuffa will provide a list of contracts
 14 it has with television distribution outlets. Zuffa will then meet and confer with Plaintiffs
 15 regarding a plan for which documents should be produced.

16 • **Third Party Analyst/Consultant Reports (RFP 15):** Zuffa has proposed to search for
 17 and produce third-party analyst or consultant reports responsive to this Request found in Zuffa's
 18 financial department.

19 • **FTC Strikeforce Documents (RFP 17, 31, 54):** Zuffa has proposed to produce in Phase
 20 1 all documents produced to the Federal Trade Commission in response to the Commission's
 21 closed investigation of Zuffa's acquisition of the Strikeforce promotion, the only acquisition in
 22 the Complaints that arguably falls within the statute of limitations.

23 • **List of Litigations/Arbitrations (RFP 55-57):** Zuffa has proposed to initially provide
 24 Plaintiffs with a list of litigations and arbitrations with athletes and their representatives related to
 25 Zuffa's contracts, at which point the parties can meet and confer to refine the set of documents
 26 responsive to these Requests.

27 In addition, Zuffa's Responses to Plaintiffs' First Set of Interrogatories addressed several
 28 of Plaintiffs' other Requests. (RFPs 32, 36, 38, 49, 52).

1 Zuffa's proposal serves the goal of moving discovery forward by providing Plaintiffs with
2 information relevant to the core allegations in their Complaints, while limiting the prohibitive
3 costs that would be incurred from collecting, processing, searching, and reviewing custodial
4 documents, including but not limited to privilege review. If the contracts were anticompetitive, as
5 Plaintiffs allege, this discovery would give Plaintiffs more than enough basis to cure the defects
6 in the existing Complaints. Moreover, Zuffa's phasing proposal would eliminate the need to do
7 duplicative searches and review of the same documents that would be required if Zuffa were to
8 respond to a limited number of Plaintiffs' Requests, including searching and reviewing individual
9 custodial documents, in Phase 1 and to respond to other Requests in Phase 2. Saving the
10 individualized searches of custodial files to all of Plaintiffs' Requests to Phase 2 saves this
11 unnecessary and expensive effort.

12 Zuffa is moving forward promptly to collect, review and produce these documents,
13 irrespective of the lack of agreement with the Plaintiffs on phasing.

14 In addition to its proposal for Phase 1 discovery, Zuffa has presented a proposal for Phase
15 2 discovery involving custodial searches of hard copy documents and ESI for designated
16 custodians, as well as targeted searches for other documents. Zuffa has proposed to Plaintiffs a
17 list of nine custodians, broken down by topic, who Zuffa believes are most knowledgeable about
18 the subject matter of Plaintiffs' Complaints. These custodians comprise the three primary
19 decision-makers at the company, the three other individuals primarily responsible for fighter
20 relations, as well as the group leaders for agreements with sponsors, venues and merchandizers.
21 Zuffa has also agreed that it will produce available documents for any predecessors to those
22 custodians back to 2010. Zuffa believes that the overbreadth of many of the Plaintiffs' Requests
23 can be addressed by limitations on custodians and an appropriate list of search terms.

24 To be clear, Zuffa believes that these custodial searches should not begin unless and until
25 the Motion to Dismiss is denied, but intends to continue to meet and confer regarding the scope of
26 custodial searches, search terms, other means of narrowing the overbroad requests, and other
27 issues of discovery to attempt to reach an agreement on these parameters.

28 With regard to websites and social media accounts, Zuffa has provided Plaintiffs with a

1 list of websites and social media accounts. Plaintiffs have requested collection and production
2 from a subset of these accounts, including UFC's main site, UFC.com. The only limitation they
3 have offered on their request is that the actual bout footage need not be produced. This would
4 leave massive amounts of other content to be collected, reviewed and produced, including but not
5 limited to every kind of promotional material, e.g., videos of pre- and post-fight interviews,
6 weigh-ins, other promotional events, commentary, news reports, outtakes, etc. This is
7 unreasonably burdensome, especially since the responsive material was publicly available. Zuffa
8 believes that at least some of the Plaintiffs and their counsel have been monitoring these sites for
9 years. Moreover, the voluminous materials that remain online can be collected by Plaintiffs as
10 readily as by Zuffa. While Plaintiffs state that the burden of production is low because publicly-
11 available materials do not require privilege review, the materials will still need to be reviewed for
12 responsiveness and the high cost of collecting and retrieving this publicly-available data,
13 including data from third party providers such as Twitter, is also burdensome and should not be
14 borne by Zuffa, particularly at this stage of the litigation. Thus, Zuffa believes that further
15 meeting and conferring on this issue is necessary.

16 Plaintiffs state that "Plaintiffs understand that Zuffa has easily accessible hardcopy files
17 related to Requests Nos. 16, 20-28, 35, 37 39, 40, 43," and propose that all hard copy and
18 "centrally maintained" ESI responsive to these requests be produced immediately. These
19 requests taken together essentially request all documents that constitute or relate in any way to
20 fighter contracts and compensation or to contracts with venues, sponsors, merchandizers or TV
21 outlets, e.g., RFP 20 calls for "All documents since 1993 to present discussing, evaluating,
22 analyzing actual or potential contract terms" To be clear, Zuffa's proposal is to produce
23 responsive documents that are found in the selection of contract files to be agreed upon as
24 discussed above, subject to an appropriate time limitation. Plaintiffs' proposal as articulated
25 would essentially require the collection, review (including for privilege) and production of (a)
26 every document in every hard copy contract file for every fighter, sponsor, venue, merchandiser,
27 or TV network with which Zuffa has or had a contract, (b) any other electronic document in
28 "centrally maintained" ESI that may exist, and (c) any hard copy document in the file of any of

1 Zuffa's hundreds of employees relating to these topics, which collectively comprise the vast
 2 majority of Zuffa's business. This is untenable and demonstrates why some selection process is
 3 necessary.

4 Further, Plaintiffs' complaint that they have not received enough information to evaluate
 5 this burden is hollow; the requested documents comprise essentially every document in every
 6 contract for every counterparty in the broad categories discussed above, many of which are
 7 irrelevant. Moreover, searching the company for every additional hard copy document that might
 8 contain a document related to these subjects just to provide a volume estimate would be itself an
 9 unnecessary and burdensome exercise because, inter alia, it is patently unreasonable to search and
 10 produce every document in the company on these broad topics in any event. Finally, Zuffa
 11 rejected during the 26(f) conference the suggestion that Zuffa should turn over attorney-client
 12 privileged documents to its litigation adversaries (and in some cases business adversaries) if the
 13 protective order contains a clawback provision. Zuffa's position remains unchanged on this issue.

14 **V. Alternative Search Methods**

15 The parties have met and conferred on alternative search methods and the parties have
 16 agreed in principle to email threading.²

17 The parties also had a joint discussion with a vendor specializing in another alternative
 18 search method – linguistic review. Plaintiffs raised concerns regarding the reliability of the
 19 vendor's linguistic review methodologies and capabilities, but remain open to evaluating
 20 alternative linguistic review vendors. Zuffa believes that such concerns can be addressed, but
 21 also believes that an appropriate agreement on custodians, search parameters, and search terms
 22 may obviate the need for alternative search methods. At this point, the parties believe it would be
 23 most productive to focus on reaching agreement on custodians, search terms, and other search
 24 parameters, while remaining open to further discussion on the usefulness of predictive
 25 coding/TAR, if necessary.

26
 27 ² The parties agreed in the Proposed Stipulated ESI Agreement to allow de-duplication and de-
 28 NISTing to cull ESI. Dkt. 160, ESI Stipulation at ¶ 6.

1 Dated: September 25, 2015

Respectfully Submitted,

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ATTESTATION OF FILER

The signatories to this document are myself and Michael Dell'Angelo and I have obtained Mr. Dell'Angelo's concurrence to file this document on his behalf.

Dated: September 25, 2015

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that service of the foregoing **Joint Status Report** was served on September 25, 2015 via the Court's CM/ECF electronic filing system addressed to all parties on the e-service list.

/s/ Suzanne E. Jaffe

An employee of Boies, Schiller & Flexner, LLP